
**APPEALS BOARD
UTAH LABOR COMMISSION**

KEVIN O'NEIL,

Petitioner,

vs.

THE BURTON GROUP,

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 8060532

Kevin O'Neil asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's summary dismissal of his charge of discrimination against The Burton Group ("Burton") in violation of the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Appeals Board exercises jurisdiction in this matter pursuant to Utah Code Annotated § 63G-4-301 and § 34A-5-107(11).

ISSUE PRESENTED

Mr. O'Neil filed a charge of discrimination with the Utah Antidiscrimination and Labor Division ("UALD") on August 10, 2006. In his charge, Mr. O'Neil alleges that Burton subjected him to discrimination and retaliation during and after his employment. UALD dismissed Mr. O'Neil's charge and he appealed that decision and requested an evidentiary hearing with the Adjudication Division.

Shortly after the case was assigned to Judge Hann for adjudication, Burton filed a motion to dismiss several of Mr. O'Neil's claims. Judge Hann granted the motion in part, leaving only the narrow issue of whether Burton retaliated against Mr. O'Neil by denying him a copy of Burton's current disability policy until August 10, 2005. Burton then filed a motion requesting summary dismissal of the charge, arguing that, even assuming all of Mr. O'Neil's claims as true, his claims would still be untimely. Judge Hann granted the motion and dismissed Mr. O'Neil's remaining claim for retaliation.

In his motion for review, Mr. O'Neil argues that Judge Hann failed to consider the efforts he made in initiating a charge of discrimination, including his call with UALD in March of 2006. He contends these efforts should qualify as filing a charge for purposes of requesting agency action.

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FINDINGS OF FACT FOR PURPOSES OF SUMMARY JUDGMENT

In considering whether summary judgment was appropriate in this case, the Appeals Board must view the disputed facts in the light most favorable to Mr. O'Neil. When viewed in that light, the facts relevant to the motion for review are as follows:

Mr. O'Neil was terminated from his employment with Burton on March 21, 2005. He later applied for short-term disability insurance coverage and was denied. He then requested a copy of Burton's new disability policy; however, Burton failed to provide him the information until August 10, 2005.

Mr. O'Neil contacted the California fair employment practices agency "on or about early 2006" and UALD on March 15, 2006. Mr. O'Neil did not file his charge with UALD until August 10, 2006.

DISCUSSION AND CONCLUSION OF LAW

The threshold question before the Appeals Board is whether Mr. O'Neil filed a timely charge of discrimination. Section 34A-5-107(1) of the Utah Antidiscrimination Act, which governs the procedures for filing a claim of discrimination, requires a request for agency action be filed with the UALD within 180 days after the alleged discriminatory or prohibited employment practice. Mr. O'Neil contends that Burton's last retaliatory act was in denying him a copy of the new insurance policy that Burton had with MetLife. For purposes of summary judgment, the Appeals Board must accept this assertion as true. Thus, the date of the last discriminatory action would be August 10, 2005, the date Mr. O'Neil was provided a copy of the insurance policy.

According to the statute, Mr. O'Neil was required to file his charge with the UALD within 180 days of August 10, 2005, which was **February 6, 2006**. Even assuming, only for purposes of this motion for review, that Mr. O'Neil's call to UALD on March 15, 2006, constituted a request for agency action, his charge would still have been untimely. Further, even assuming his contact with the California agency constituted a request for agency action, it would not have been a request for UALD to take action and still would not have satisfied the filing requirement. The Appeals Board affirms Judge Hann's finding that Mr. O'Neil's charge of discrimination was filed untimely and affirms the dismissal of his charge.

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ORDER

The Appeals Board affirms Judge Hann's decision. It is so ordered.

Dated this 16th day of December, 2008.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.